

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FACILITY GATEWAY CORPORATION,)
Plaintiff)
v.) CIVIL ACTION NO. 11- 85 ERIE
INFINITE POWER & ENERGY, LLC and) JUDGE SUSAN PARADISE BAXTER
SHAWN VAUGHT,)
Defendants) ELECTRONICALLY FILED

PLAINTIFF'S ANSWER TO DEFENDANTS' COUNTERCLAIMS

Plaintiff, Facility Gateway Corporation, by and through its undersigned counsel, MacDonald, Illig, Jones & Britton LLP, hereby answers Defendants' Counterclaims in the captioned matter as follows:

First Affirmative Defense (As to All Counterclaims)

Defendants' Counterclaims I fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Defendant's Answer and Counterclaims Complaint seek costs in his and its requested relief. There is no basis in law to award defendant its costs.

Third Affirmative Defense (As to All Counterclaims)

Plaintiff denies each and every allegation contained in Defendants' Counterclaims except as hereinafter may be expressly admitted. In response to the numbered paragraphs and sentences of the Counterclaim, defendant admits, denies or otherwise responds as follows:

Counterclaim I (Tampa Generator Rent)

36. The plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
37. The plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
38. Plaintiff denies that it received a generator or generators at its Tampa Florida job site.
39. Plaintiff denies that it signed for a generator.
40. Plaintiff lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
41. Plaintiff denies that it was obligated to pay for any generator rental.
42. Plaintiff lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Plaintiff raises the affirmative defense of laches and estoppel in light of the fact that defendant in accordance with its own admission failed to defend the lawsuit.

WHEREFORE, having fully answered Defendants' Counterclaim I, plaintiff prays for a judgment dismissing Counterclaim I with prejudice and for such further relief as the Court may deem just.

Counterclaim II (Claim Related to 500 Kilowatt Generators)

43. Defendants lack knowledge and information sufficient to form a belief as to the truth of paragraph 43.

44. Defendants lack knowledge and information sufficient to form a belief as to the truth of paragraph 44.

45. The allegations contained in this paragraph are denied. To the contrary, defendants never took any steps to secure the 500 kilowatt generators. Accordingly, plaintiff has not been unjustly enriched.

46. The allegations contained in paragraph 46 are denied.

WHEREFORE, having fully answered Defendants' Counterclaim II, plaintiff prays for a judgment dismissing Defendants' Counterclaim II with prejudice and for such further relief as the Court may deem just.

Counterclaim III

47. The allegations contained in this paragraph are denied.

48. The allegations contained in this paragraph are denied.

49. Plaintiff denies that it breached the contract or that defendant had any losses.

50. The allegations contained in this paragraph constitute a conclusion of law to which no response of plaintiff is required. To the extent a response is deemed required, the allegations are denied.

WHEREFORE, having fully answered Defendants' Counterclaim III, plaintiff prays for a judgment dismissing Defendants' Counterclaim III with prejudice and for such further relief as the Court may deem just.

Fourth Affirmative Defense (As to Counterclaim III)

Plaintiff raises the affirmative defense of waiver, anticipatory breach, and accord and satisfaction.

WHEREFORE, having fully answered Defendants' Counterclaims I, II and III, plaintiff prays for a judgment dismissing Defendants' Counterclaims with prejudice and for such further relief as the Court may deem just.

Respectfully submitted,

s/ Patrick J. Mondi

Patrick J. Mondi
PA 207420
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7702
(814) 454-4647 (facsimile)
pmondi@mijb.com

Attorneys for Plaintiff
Facility Gateway Corporation

Date: October 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2011, the foregoing Plaintiff's Answer to Defendants' Counterclaims was filed electronically with the Clerk of Court, using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

s/ Patrick J. Mondi
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